SENATE . . . . . No. 2451

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

SENATE, May 24, 2021.

The committee on Municipalities and Regional Government, to whom was referred the petition (accompanied by bill, Senate, No. 1361) of Bruce E. Tarr and Lenny Mirra (by vote of the town) for legislation to amend the Newbury general by-laws from board of selectmen to select board, reports the accompanying bill (Senate, No. 2451).

For the committee,
John J. Cronin

FILED ON: 5/20/2021

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In the One Hundred and Ninety-Second General Court
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An Act amending the Newbury general by-laws from board of selectmen to select board.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 460 of the acts of 2008 is hereby amended by striking section 2 in its entirety and inserting in place there of the following:- "The administration of all of the fiscal, prudential, and municipal affairs of the town shall remain vested in the executive branch headed by the select board and the legislative powers of the town shall remain vested in a town meeting open to all voters."

SECTION 2. Chapter 460 of the acts of 2008 is hereby amended by striking section 3 in its entirety and inserting in place thereof the following:- The select board shall appoint the chief of police and all other police officers, the town counsel, the administrative assistant to the select board, the members of the personnel board, the members of the zoning board of appeals, the members of the finance committee, 2 members of the capital planning committee, the board of fire engineers, and all the members of other appointed boards, committees, and commissions except as may be otherwise specified in this act.

SECTION 3. Chapter 460 of the acts of 2008 is hereby amended by striking section 5 in its entirety and inserting in place thereof the following:- A member of the select board, or of the regional school committee, or of the finance committee, during the term for which the member

was elected or appointed, shall be ineligible either by election or appointment to hold any other town office. Any other person appointed by the select board or town administrator to a town office under this act or of any general or special law shall be eligible during the term of said office to appointment to any other town office, except that the town accountant shall not be eligible to hold the position of town treasurer or the position of town collector. The town administrator, subject to applicable General Laws relating thereto, may assume the duties of an office which he is authorized to fill by appointment.

SECTION 4. Chapter 460 of the acts of 2008 is hereby amended by striking section 6 in its entirety and inserting in place thereof the following:- The select board elected as provided herein shall appoint, as soon as practicable, for a definite term to be set by the select board, a town administrator who shall be a person especially fitted by education, training, and experience, to perform the duties of the office. The town administrator shall be appointed without regard to political affiliations or beliefs. The town administrator need not be a resident of the town or of the commonwealth, shall possess a college degree at the bachelor level and shall have 3 years of full-time paid experience in a supervisory administrative position. A master's degree may substitute for not more than 1 year of such paid experience. The town administrator shall execute a bond in favor of the town for the faithful performance of the duties of the office in a sum and with such surety or sureties as fixed or approved by the select board, the cost of which shall be paid by the town. The select board shall enter into a formal contract with the town administrator and establish a compensation and benefits package which may take precedence over any personnel by-laws.

SECTION 5. Chapter 460 of the acts of 2008 is hereby amended by striking section 7 in its entirety and inserting in place thereof the following:- "A vacancy in the office of town administrator shall be filled as soon as possible by the select board. Pending the appointment of a town administrator or filling of a vacancy, the select board shall, within 7 days, appoint a suitable person to perform the duties of the office.

SECTION 6. Chapter 460 of the acts of 2008 is hereby amended by striking section 8 in its entirety and inserting in place thereof the following:- “SECTION 8. The town administrator may designate, subject to approval by the select board, by letter filed with the town clerk, a qualified officer of the town to perform the duties of the office during a temporary absence or disability of the town administrator. In the event of failure of the town administrator to make that designation, the select board may, by resolution, designate an officer of the town to perform the duties of the office until the town administrator shall return or the disability shall cease.

SECTION 7. Chapter 460 of the acts of 2008 is hereby amended by striking section 9 in its entirety and inserting in place thereof the following:- “SECTION 9. During any term of appointment of the administrator, the select board may, under the terms and conditions of the contract entered into between the town and the administrator as set forth in section 6, remove the administrator for good cause. In the event of such removal, the administrator shall receive a severance pay in the amount equal to 1 month of pay for each full year of service to the town, but in no event more than an amount equal to 3 months’ pay. “

SECTION 8. Chapter 460 of the acts of 2008 is hereby amended by striking section 10 in its entirety and inserting in place thereof the following:- “SECTION 10. The town administrator shall receive such compensation for services as the select board shall determine, but the compensation shall not exceed the amount appropriated therefore by the town”

SECTION 9. Chapter 460 of the acts of 2008 is hereby amended by striking section 11 in its entirety and inserting in place thereof the following:- “SECTION 11. In addition to specific powers and duties provided in this act, the town administrator shall have the general powers and duties enumerated in this section as follows:

(1) The town administrator shall supervise the heads of all departments and shall supervise and direct the general administration of all commissions, boards, and offices, except the select board, the regional school committee, the planning board, the board of health, the

board of assessors, the finance committee, the library trustees, the town counsel, and the moderator. The town administrator shall not exercise any control over the discretionary power vested by statute in any such board, committee, commission, or office.

(2) The town administrator, in accordance with this act and with the approval of the select board, except as otherwise expressly prohibited by the General Laws, may reorganize, consolidate, or abolish departments, commissions, boards, or offices under his direction and supervision, in whole or in part, and may establish such new departments, commissions, boards, or offices as the town administrator considers necessary and may transfer the powers and duties of one department, commission, board, or office to another.

(3) The town administrator shall approve, upon the recommendation of department heads, the appointment and removal of all officers and employees of the town. Department heads shall select, on merit and fitness alone, all department employees for such recommendation. The town administrator shall appoint on merit and fitness alone, and may remove, all officers and employees of the town who are not otherwise appointed or elected under this act.

(4) The town administrator shall attend all regular meetings of the select board.

(5) The town administrator shall keep full and complete records of the office and shall render as often as may be required by the select board, but, in any case, annually, a full report of all operations during the period reported on.

(6) The town administrator shall keep the select board fully advised as to the needs of the town and shall recommend to the select board for adoption measures requiring action by them or by the town as the town administrator considers necessary or expedient.

(7) The town administrator shall have jurisdiction over the rental and use of town property and shall be responsible for the maintenance and repair of town buildings. The town

administrator shall be responsible for the preparation of plans and the supervision of work on existing town buildings and on the construction of new town buildings.

(8) The town administrator shall appoint the chief procurement officer of the town who shall be responsible for the purchase of all supplies and materials and equipment, except books and educational materials for schools and books and other media for libraries, and shall approve the awards of all contracts for all departments of the town. The chief procurement officer may hold other positions with the town consistent with the officer's role hereunder.

(9) The town administrator shall administer, either directly or through a person appointed by the town administrator in accordance with this act, general and special laws applicable to the town, all town by-laws and all regulations established by the select board.

(10) The town administrator shall have authority, with the approval of the select board and the town counsel, to prosecute, defend and compromise all litigation to which the town is a party, and shall be the executive officer of a public employer in the town as referred to in chapter 258 of the General Laws pertaining to the processing of claims against the town.

(11) The town administrator shall be the select board's agent for collective bargaining and may request the town counsel to assist in the performance of these duties.

(12) The town administrator shall secure on or before December first of each year from all offices, boards, and committees charged with equipment, a list of the equipment upon forms approved by the finance committee. The lists shall be filed with the town accountant who shall transmit them to the clerk of the finance committee.

(13) The town administrator shall attend town meetings and shall be permitted to speak when recognized by the moderator.

(14) The town administrator shall be responsible for the implementation of town meeting votes and shall report annually in writing to the town meeting on the status of prior town meeting votes on which implementation is not complete.

(15) The town administrator shall be accessible and available during regular office hours for consultation to chairpersons of boards, committees, and commissions of the town, whether appointed or elected, and shall make accessible and available to them data and records of the office of town administrator as may be requested in connection with their official duties.

(16) The town administrator shall perform such duties, consistent with the office, as may be required by the by-laws of the town or by vote of select board or town meeting.

SECTION 10. Chapter 460 of the acts of 2008 is hereby amended by striking section 12 in its entirety and inserting in place thereof the following:- "SECTION 12. The town administrator may, without notice, cause the affairs of any division or department under his or her supervision, or the job-related conduct of any officer or employee thereof, to be examined. The town administrator shall have access to all town books and papers for information necessary for the proper performance of the town administrator's duties. The town administrator shall promptly transmit any findings of wrongdoing to the select board.

SECTION 11. Chapter 460 of the acts of 2008 is hereby amended by striking section 13 in its entirety and inserting in place thereof the following:- "SECTION 13. The town administrator shall appoint, with the approval of the select board, the town treasurer, the tax collector, the town accountant, the building inspector and assistant building inspector, the conservation agent, the highway superintendent, the harbormaster, the planning director, and the director of veterans' affairs. The town administrator shall appoint, and may remove subject to the approval of the select board , department heads, officers, and subordinates and employees for whom no other method of appointment is provided in this act, except the assistant town clerk, who shall be appointed by the town clerk, and persons serving under other elected agencies and

appointments made by representatives of the commonwealth. Appointments to the permanent positions made by the town administrator shall become effective on the fifteenth day following the day notice of appointment is filed with the select board, unless the select board shall, within that period, by a majority vote of the full board, vote to reject any such appointment.

SECTION 12. Chapter 460 of the acts of 2008 is hereby amended by striking section 14 in its entirety and inserting in place thereof the following:- "SECTION 14. The registered voters of the town of Newbury shall, in accordance with applicable laws, town by-laws, and votes of the town, continue to elect the following:

(1) moderator;

(2) members of the select board;

(3) regional school committee members;

(4) members of the planning board;

(5) members of the board of health;

(6) library trustees;

(7) town clerk;

(8) constables;

(9) fish commissioners;

(10) trustees of the First Settlers Burial Ground;

(11) tree warden; and

(12) members of the board of assessors.

This act shall not affect the term of office of an elected official or elected member of a board, committee or authority. Every other elective office, board, committee, or commission of the town shall be terminated or shall become appointive as provided herein, any other law to the contrary notwithstanding. The term of office of a person elected to an office, board, committee, or commission of the town, existing at the time of such acceptance and terminated hereunder, shall continue until the appointment of the town administrator, and thereafter the offices, boards, committees, and commissions shall be abolished, and all powers, duties and obligations conferred or imposed thereon by law, except as provided by this act, shall be conferred and imposed upon the town administrator to the extent hereinafter provided. The term of office of a person elected to an office, board, committee, or commission, existing as an elected office on the effective date of this act and having become appointive hereunder, shall continue until the term for which that person was elected shall have expired, and until the appointment and qualification of a successor. The powers, duties, and responsibilities of elected officials shall be as now or hereafter provided by applicable General Laws, special acts, town by-laws, and votes of the town, except as otherwise expressly provided herein. Notwithstanding the election by the voters of the town of the officers named in this section, those officers shall be available to the administrator for consultation, conference and discussion on matters relating to their respective offices. The town administrator may require those officials, except the select board, to prepare reports for the town administrator necessary for the efficient administration of any of the fiscal responsibilities of the office.

SECTION 13. Chapter 460 of the acts of 2008 is hereby amended by striking section 15 in its entirety and inserting in place thereof the following:- “SECTION 15., the town administrator shall submit in writing to the select board a careful detailed estimate of the probable expenditures of the town government for the ensuing fiscal year, stating the amount required to meet the interest and maturing bonds and notes or other outstanding indebtedness of the town, and showing specifically the amount necessary to be provided for each fund and

department, together with a statement of the expenditures of the town for the same purposes in the preceding year and an estimate of the expenditures for the current year. The town administrator shall also submit a statement showing all revenues received by the town in the preceding fiscal year together with an estimate of the receipts of the current year and an estimate of the amount of income from all sources of revenue exclusive of taxes upon property in the ensuing year. The town administrator shall report the probable amount required to be levied and raised by the taxation to defray all expenses and liabilities of the town,. For the purposes of enabling the town administrator to make up the annual estimates of expenditures, all boards, offices, and committees of the town shall, during the first week of January , furnish all information in their possession and submit in writing to the town administrator a detailed estimate of the appropriations required for the efficient and proper conduct of their respective departments during the next fiscal year.

SECTION 14. Chapter 460 of the acts of 2008 is hereby amended by striking section 16 in its entirety and inserting in place thereof the following:- “SECTION 16. The select board shall consider the tentative budget submitted by the town administrator and make recommendations relative thereto as it considers expedient and proper in the interests of the town. The select board shall transmit a copy of the budget, together with its recommendation relative thereto, to each member of the finance committee, either at or before their joint meeting to finalize the budget for the following fiscal year.”

SECTION 15. Chapter 460 of the acts of 2008 is hereby amended by striking section 17 in its entirety and inserting in place thereof the following:- “SECTION 17. The town administrator shall perform the duties of the town’s director of municipal finance and, as such, shall be the chief fiscal officer of the town. Warrants for the payment of town funds prepared by the town accountant in accordance with section 56 of chapter 41 of the General Laws shall be submitted to the town administrator. The approval of warrants by the town administrator shall be

sufficient to authorize payment by the town treasurer, but in the event of a vacancy in the office of town administrator the select board shall approve the warrants".